

Date signed October 14, 2008



A handwritten signature in cursive script that reads "Paul Mannes".

PAUL MANNES
U. S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt**

In re:	Case No. 08-19041PM
Mildred Charles,	Chapter 13
Debtor.	

AMENDED MEMORANDUM OF DECISION

This matter came before the court on the unopposed "Debtor's Motion to Avoid Lien of Principal Residence Pursuant to 11 U.S.C. § 506." The Motion was denied by the court on October 14, 2008 (#45). This amended decision does not change that ruling.

The Debtor asserts that Lendmark Financial Services, Inc., the holder of the second deed of trust against the Debtor's property located at 13107 Ripon Place, Upper Marlboro, MD 20772, in the approximate amount of \$31,338.31, is wholly unsecured and avoidable. First Franklin c/o Home Loan Services, the holder of the first deed of trust, is said to be owed approximately \$281,172.19.

In support of the Motion, the Debtor referred to the sales of four properties and assigned a value of \$279,075.00. She also attached a copy of the current county tax assessment for the property as an exhibit to her Motion reflecting valuation of \$293,420.00 as of January 1, 2008. The court finds that the tax assessed value calculated by the Maryland Department of Assessments and Taxation reflects the fair

market value of the property, rendering the lien of Lendmark Financial Services, Inc. partially secured.

Inasmuch as only wholly unsecured junior liens on a debtor's principal residence escape application of the anti-modification provision of 11 U.S.C. § 1322(b)(2) and because the court finds that the Debtor's residence has a current fair market value in excess of the outstanding balance due on the senior lien, the junior lien cannot be avoided as wholly unsecured. *In re Bartee*, 212 F.3d 277 (CA5 2000); *In re Dziendziel*, 295 B.R. 184 (BC W.D.N.Y. 2003).

cc: Debtor
Debtor's Counsel
Lendmark Financial Services, Inc.
Lendmark Financial Services, Inc. - Counsel
Chapter 13 Trustee
United States Trustee

End of Memorandum